

1 RENE L. VALLADARES  
2 Federal Public Defender  
3 State Bar No. 011479  
4 ALINA M. SHELL  
5 Assistant Federal Public Defender  
6 411 East Bonneville Avenue, Suite 250  
7 Las Vegas, Nevada 89101  
8 (702) 388-6577/Phone  
9 (702) 388-6261/Fax

10 Attorney for Defendant Benito Loaiza-Parra

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 BENITO LOAIZA-PARRA,

17 Defendant.

18 2:13-cr-401-GMN-VCF

19 **MOTION FOR LATE FILING OF**  
**NOTICE OF APPEAL**

20 COMES NOW the Defendant, Benito Loaiza-Parra (hereinafter Loaiza), by and through his  
21 attorney of record, Alina M. Shell, Assistant Federal Public Defender, and respectfully requests this  
22 Court enter an Order excusing Mr. Loaiza's late filing of a Notice of Appeal to the United States  
23 Court of Appeals for the Ninth Circuit from the Judgment of Conviction, entered on  
24 October 6, 2014, imposing a sentence of 30 months custody on Mr. Loaiza. (Clerk's Record  
(CR) 24).

25 This motion is made pursuant to Federal Rule of Appellate Procedure 4(b)(4) and is based  
26 upon the following Points and Authorities filed herewith.

27 DATED this 3<sup>rd</sup> day of November, 2014.

28 RENE L. VALLADARES  
29 Federal Public Defender

30 /s/ *Alina M. Shell*

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ALINA M. SHELL,  
32 Assistant Federal Public Defender

## **POINTS AND AUTHORITIES**

Federal Rule of Appellate Procedure 4(b)(4) states: “Upon a showing of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time or filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).” *See* FRAP 4(b)(4).

6 This Court sentenced Mr. Loaiza on October 2, 2014 (CR 23). The Judgment of Conviction  
7 was entered on October 6, 2014 (CR 24). As the Judgment of Conviction was entered on  
8 October 6, 2014, the Notice of Appeal was due no later than October 20, 2014. *See* FRAP  
9 4(b)(A)(i). Mr. Loaiza did inform undersigned counsel of his desire to appeal his sentence in a  
10 timely manner. However, due to a miscommunication within the Office of the Federal Defender,  
11 the Notice of Appeal was not timely filed. This miscommunication was only discovered on  
12 November 3, 2014, and this Motion for Late Filing of Notice of Appeal was immediately prepared.  
13 Mr. Loaiza entered a guilty plea without the benefit of a plea agreement and is therefore not barred  
14 from pursuing this appeal.

15 Mr. Loaiza is within the 30-day rule prescribed by FRAP 4(b)(4) to request this extension.  
16 In this case, good cause has been shown as the late filing is not the fault of Mr. Loaiza, but instead,  
17 the result of a miscommunication on the part of the Federal Defender's Office. Mr. Loaiza,  
18 therefore, respectfully requests an extension of time to file the attached Notice of Appeal. The  
19 equities support this Court entering an Order allowing Mr. Loaiza to file an out-of-time Notice of  
20 Appeal. Counsel will electronically file the attached Notice of Appeal, upon receipt of the Court's  
21 Order granting the filing of such.

22 DATED this 3<sup>rd</sup> day of November, 2014.

## IT IS SO ORDERED

RENE L. VALLADARES  
Federal Public Defender

/s/ *Alina M. Shell*

26 || Dated: November 24, 2014

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ALINA M. SHELL,  
Assistant Federal Public Defender

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Gloria M. Navarro, Chief Judge  
United States District Court